

AMENDED IN SENATE SEPTEMBER 5, 1997

AMENDED IN SENATE AUGUST 25, 1997

AMENDED IN SENATE JULY 17, 1997

AMENDED IN SENATE JUNE 30, 1997

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 1082

**Introduced by Committee on Governmental Organization
(Brown (Chair), Baca, Bordonaro, Floyd, Hertzberg,
Honda, Margett, Perata, Vincent, Wayne, and Wright)**

February 27, 1997

An act to amend Sections 23355.1, 24045.15, and 25501 of, to amend and repeal Section 25658.4 of, and to add Section 25758.5 to, the Business and Professions Code, *and to add Section 172p to the Penal Code*, relating to alcoholic beverages.

LEGISLATIVE COUNSEL'S DIGEST

AB 1082, as amended, Committee on Governmental Organization. Alcoholic beverages.

(1) The Alcoholic Beverage Control Act provides that certain licensees may, among other things, store and deliver distilled spirits from certain locations under specified conditions.

This bill would allow a retail off-sale licensee to sell wine at an auction and deliver that wine to any purchaser at the

auction from the vendor's licensed premises or any other storage facility under specified conditions.

(2) *The Alcoholic Beverage Control Act authorizes the issuance of a special temporary on-sale or off-sale wine license to certain nonprofit corporations having an agricultural purpose to sell wine, donated or sold to the nonprofit corporation by the member winegrowers, to consumers for the purpose of fundraising, as specified.*

This bill would require that wine for sale under this special license bear the brand name of the producing winery. This bill would also require any advertising or solicitation for sale of wine under that license to disclose certain information concerning members of the nonprofit corporation.

(3) The Alcoholic Beverage Control Act prohibits a manufacturer, bottler, importer, or wholesaler of products of the brewing industry from furnishing, giving, renting, lending, or selling, directly or indirectly, any equipment, fixtures, or supplies, other than alcoholic beverages, to any person engaged in operating, owning, or maintaining any on-sale premises, as specified. Existing law provides, for purposes of that prohibition, that supplies do not include paper beverage coasters, as specified.

This bill would revise that provision to provide that notwithstanding any other provision of that act, a manufacturer, bottler, importer, or wholesaler of products of the brewing industry may furnish, give, rent, lend, or sell, directly or indirectly, those specified paper coasters or brand-identified acrylic table tent holders to any person engaged in operating, owning, or maintaining any on-sale premises where alcoholic beverages are sold for consumption on the premises.

~~(3)~~

(4) The Alcoholic Beverage Control Act prohibits a clerk from making an off sale of alcoholic beverages unless the clerk executes, under penalty of perjury, on the first day he or she makes that sale, an application and acknowledgment, on a form prepared by the department, that includes at a minimum a summary of certain requirements and prohibitions in the act, as specified.



This bill would additionally require inclusion of information as to sales of keg beer for consumption off licensed premises.

The ~~act~~ *Alcoholic Beverage Control Act* provides that a violation of any of its provisions for which another penalty or punishment is not specifically provided is a misdemeanor. This bill would expand existing crimes by imposing additional duties on a licensee under the act, thus, the bill would impose a state-mandated local program.

This bill would repeal a substantially duplicative provision.

~~(4)~~

(5) The Alcoholic Beverage Control Act authorizes the Department of Alcoholic Beverage Control to pay witness fees and necessary expenses or mileage to a person who attends as a witness any criminal proceeding involving certain violations of the act, as specified.

This bill would authorize the department to pay certain expenses to a person subpoenaed by the department to appear as a witness at a hearing on a protest, accusation, or petition for a license, as specified.

~~(5)~~

(6) Existing law makes it a crime punishable as a misdemeanor to sell or expose for sale alcoholic beverages within 1 1/2 miles of any university grounds or campus except in specified instances.

This bill would exempt from that criminal provision the sale or exposing or offering for sale of beer or wine by any on-sale alcoholic beverage licensee where the premises are situated more than 1,200 feet from the boundaries of Whittier College.

(7) This bill would incorporate additional changes in Section 25658.4 of the Business and Professions Code, proposed by SB 805, to be operative only if SB 805 and this bill are both chaptered and become effective on or before January 1, 1998, and this bill is chaptered last.

~~(6)~~

(8) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 23355.1 of the Business and
2 Professions Code is amended to read:
3 23355.1. Notwithstanding any other provision of this
4 division, the following acts are authorized:
5 (a) Deliveries of distilled spirits by a licensee to a retail
6 licensee may be made from the vendor's licensed
7 premises or from a warehouse located within the county
8 in which the vendor's licensed premises are located
9 except as permitted by Section 23383. Deliveries to a
10 licensed importer may also be made from any point
11 outside the state.
12 (b) A distilled spirits manufacturer, distilled spirits
13 manufacturer's agent, distilled spirits rectifier general, or
14 rectifier may store, bottle, cut, blend, mix, flavor, color,
15 label, and package distilled spirits owned by another
16 distilled spirits manufacturer, distilled spirits
17 manufacturer's agent, distilled spirits rectifier general,
18 rectifier, or a distilled spirits wholesaler, and may deliver
19 those distilled spirits from the premises where stored,
20 bottled, cut, blended, mixed, flavored, colored, labeled,
21 or packaged, or from a warehouse located in the same
22 county as that premises for the account of the owner of
23 those distilled spirits to any licensee that owner would be
24 authorized to deliver to under his or her own license,
25 except to a retail licensee.
26 (c) A distilled spirits manufacturer, distilled spirits
27 manufacturer's agent, distilled spirits rectifier general,
28 rectifier, or distilled spirits wholesaler may store and
29 deliver distilled spirits for the account of another licensee
30 who would be authorized to make the delivery under his
31 or her own license, except that licensee shall not make a
32 delivery to a retail licensee on behalf of another licensee.
33 (d) A retail off-sale licensee with annual United States
34 auction sales revenues of at least five hundred million
35 dollars (\$500,000,000) may sell wine at any auction held

1 in compliance with Section 2328 of the Commercial Code
2 to consumers and retail licensees and may deliver wines
3 sold to any purchaser at that auction from the vendor's
4 licensed premises or from any other storage facility.

5 SEC. 2. *Section 24045.15 of the Business and*
6 *Professions Code, as added by Section 1 of Chapter 383 of*
7 *the Statutes of 1997, is amended to read:*

8 24045.15. (a) Notwithstanding any other provision of
9 this division, the department may issue a special
10 temporary on-sale or off-sale wine license to any
11 nonprofit corporation having an agricultural purpose
12 that is exempt from the payment of income taxes under
13 Section 501(c)(5) of the Internal Revenue Code of 1986.
14 If the nonprofit corporation's name, or any name under
15 which the nonprofit corporation does business, includes
16 the designation of an American viticultural area (AVA)
17 recognized by the United States Bureau of Alcohol,
18 Tobacco and Firearms (BATF), as set forth in Part 9
19 (commencing with Section 9.1) of Title 27 of the Code of
20 Federal Regulations (27 C.F.R. 9.1 et seq.), the
21 membership of the nonprofit corporation shall include a
22 majority of the winegrowers located in the named AVA
23 in order to obtain a license under this section. No more
24 than one nonprofit corporation located in an AVA is
25 entitled to obtain a license under this section. The
26 applicant shall accompany the application with a fee of
27 one hundred dollars (\$100).

28 (b) This special license shall only entitle the licensee
29 to sell wine donated or sold to the nonprofit corporation
30 by the member winegrowers to consumers for the
31 purpose of fundraising. *The wine shall bear the brand*
32 *name of the producing winery.* Off-sale privileges shall be
33 limited to direct mail, telephone, and on-line computer.
34 No member winegrower shall donate or sell more than 75
35 cases of wine per year to the nonprofit corporation and
36 the nonprofit corporation shall sell no more than 1,000
37 cases of wine per year under the license. If the nonprofit
38 corporation's name or any name under which the
39 nonprofit corporation does business includes the
40 designation of an American viticultural area (AVA)

1 recognized by the United States Bureau of Alcohol,
2 Tobacco and Firearms (BATF), as set forth in Part 9
3 (commencing with Section 9.1) of Title 27 of the Code of
4 Federal Regulations (27 C.F.R. 9.1 et seq.), the wines sold
5 by the nonprofit corporation must be entitled to use the
6 named AVA as the appellation of origin. *In order to avoid*
7 *confusion between the corporation and any winery*
8 *whose name also includes the designation of the named*
9 *AVA, any advertising or solicitation for the sale of wine*
10 *under this license by the corporation shall include a*
11 *statement disclosing that the corporation is a nonprofit*
12 *agricultural organization whose members include*
13 *individual winegrowers or grapegrowers and whose*
14 *purpose is to promote its agricultural region and improve*
15 *its grapes and wines. This advertising or solicitation shall*
16 *also include a complete roster of the corporation's*
17 *members and a list of the brand names, varieties, and*
18 *vintages of the wines offered for sale. The wine shall not*
19 *be sold at less than its minimum retail price.*

20 (c) This special license shall be for a period not
21 exceeding 60 days. Only one special license authorized by
22 this section shall be issued to any nonprofit corporation in
23 any 12-month period.

24 SEC. 2.3. Section 25501 of the Business and
25 Professions Code is amended to read:

26 25501. No manufacturer, bottler, importer, or
27 wholesaler of products of the brewing industry shall:

28 (a) Furnish, give, rent, lend, or sell, directly or
29 indirectly, any equipment, fixtures, or supplies, other
30 than alcoholic beverages, to any person engaged in
31 operating, owning, or maintaining any on-sale premises
32 where alcoholic beverages are sold for consumption on
33 the premises. This subdivision shall not prohibit the
34 furnishing of draft beer pumps and iceboxes to those
35 persons who operate on a temporary basis.
36 Notwithstanding any other provision of this division, a
37 manufacturer, bottler, importer, or wholesaler of
38 products of the brewing industry may furnish, give, rent,
39 lend, or sell, directly or indirectly, paper beverage
40 coasters less than 25 square inches in size and having a



1 value of less than five cents (\$0.05) per coaster or
2 brand-identified acrylic table tent holders to any person
3 engaged in operating, owning, or maintaining any on-sale
4 premises where alcoholic beverages are sold for
5 consumption on the premises.

6 (b) Directly or indirectly, hold the ownership or any
7 interest, by stock ownership or otherwise, in any firm,
8 corporation, partnership, or business, furnishing,
9 supplying, or dealing in any office, store, or restaurant
10 furnishings or equipment, other than signs for interior use
11 or supplies authorized to be given under this division to
12 any person engaged in operating, owning, or maintaining
13 any on-sale premises.

14 (c) Notwithstanding any provision of this section, the
15 holder of a beer and wine wholesaler's license may
16 manufacture, distribute, and sell any lawful product to
17 any person engaged in operating, owning, or maintaining
18 any on-sale premises where alcoholic beverages are sold
19 for consumption on the premises, provided that these
20 products are sold by the holder of the beer and wine
21 wholesaler's license to the on-sale licensee at a price not
22 less than the current market price for the product.

23 SEC. 3. Section 25658.4 of the Business and
24 Professions Code, as added by Section 4 of Chapter 726 of
25 the Statutes of 1991, is amended to read:

26 25658.4. (a) On and after January 1, 1992, no clerk
27 shall make an off sale of alcoholic beverages unless the
28 clerk executes under penalty of perjury on the first day
29 he or she makes that sale an application and
30 acknowledgment. The application and acknowledgment
31 shall be in a form understandable to the clerk.

32 (1) The department shall specify the form of the
33 application and acknowledgment, which shall include at
34 a minimum a summary of this division pertaining to the
35 following:

36 (A) The prohibitions contained in Sections 25658 and
37 25658.5 pertaining to the sale to, and purchase of,
38 alcoholic beverages by persons under 21 years of age.

39 (B) Bona fide evidence of majority as provided in
40 Section 25660.

1 (C) Hours of operation as provided in Article 2
2 (commencing with Section 25630) of Chapter 16.

3 (D) The prohibitions contained in subdivision (a) of
4 Section 25602 and Section 25602.1 pertaining to sales to an
5 intoxicated person.

6 (E) Sections 23393 and 23394 as they pertain to
7 on-premises consumption of alcoholic beverages in an
8 off-sale premises.

9 (F) The requirements and prohibitions contained in
10 Section 25659.5 pertaining to sales of keg beer for
11 consumption off licensed premises.

12 (2) The application and acknowledgment shall also
13 include a statement that the clerk has read and
14 understands the summary, a statement that the clerk has
15 never been convicted of violating this division or, if
16 convicted, an explanation of the circumstances of each
17 conviction, and a statement that the application and
18 acknowledgment is executed under penalty of perjury.

19 (3) The licensee shall keep the executed application
20 and acknowledgment on the premises at all times and
21 available for inspection by the department. A licensee
22 with more than one licensed off-sale premises in the state
23 may comply with this subdivision by maintaining an
24 executed application and acknowledgment at a
25 designated licensed premises, regional office, or
26 headquarters office in the state. An executed application
27 and acknowledgment maintained at the designated
28 locations shall be valid for all licensed off-sale premises
29 owned by the licensee. Any licensee maintaining an
30 application and acknowledgment at a designated site
31 other than the individual licensed off-sale premises shall
32 notify the department in advance and in writing of the
33 site where the application and acknowledgment shall be
34 maintained and available for inspection. A licensee
35 electing to maintain application and acknowledgments at
36 a designated site other than the licensed premises shall
37 maintain at each licensed premises a notice of where the
38 executed application and acknowledgments are located.
39 Any licensee with more than one licensed off-sale
40 premises who elects to maintain the application and

1 acknowledgments at a designated site other than each
2 licensed premises shall provide the department, upon
3 written demand, a copy of any employee's executed
4 application and acknowledgment within 10 business days.
5 A violation of this subdivision by a licensee constitutes
6 grounds for discipline by the department.

7 (b) On and after January 1, 1992, the licensee shall post
8 a notice that contains and describes, in concise terms,
9 prohibited sales of alcoholic beverages, a statement that
10 the off-sale seller will refuse to make a sale if the seller
11 reasonably suspects that the Alcoholic Beverage Control
12 Act may be violated, and a statement that a minor who
13 purchases or attempts to purchase alcoholic beverages is
14 subject to suspension or delay in the issuance of his or her
15 driver's license pursuant to Section 13202.5 of the Vehicle
16 Code. The notice shall be posted at an entrance or at a
17 point of sale in the licensed premises or in any other
18 location that is visible to purchasers of alcoholic
19 beverages and to the off-sale seller.

20 (c) As used in this section:

21 (1) "Off-sale seller" means any person holding a retail
22 off-sale license issued by the department and any person
23 employed by that licensee who in the course of that
24 employment sells alcoholic beverages.

25 (2) "Clerk" means an off-sale seller who is not a
26 licensee.

27 SEC. 3.5. Section 25658.4 of the Business and
28 Professions Code, as added by Section 4 of Chapter 726 of
29 the Statutes of 1991, is amended to read:

30 25658.4. (a) On and after January 1, 1992, no clerk
31 shall make an off sale of alcoholic beverages unless the
32 clerk executes under penalty of perjury on the first day
33 he or she makes that sale an application and
34 acknowledgment. The application and acknowledgment
35 shall be in a form understandable to the clerk.

36 (1) The department shall specify the form of the
37 application and acknowledgment which shall include at
38 a minimum a summary of this division pertaining to the
39 following:

1 (A) The prohibitions contained in Sections 25658 and
2 25658.5 pertaining to the sale to, and purchase of,
3 alcoholic beverages by persons under 21 years of age.

4 (B) Bona fide evidence of majority as provided in
5 Section 25660.

6 (C) Hours of operation as provided in Article 2
7 (commencing with Section 25630) of Chapter 16.

8 (D) The prohibitions contained in subdivision (a) of
9 Section 25602 and Section 25602.1 pertaining to sales to an
10 intoxicated person.

11 (E) Sections 23393 and 23394 as they pertain to
12 on-premises consumption of alcoholic beverages in an
13 off-sale premises.

14 (F) The requirements and prohibitions contained in
15 Section 25659.5 pertaining to sales of keg beer for
16 consumption off licensed premises.

17 (2) The application and acknowledgment shall also
18 include a statement that the clerk has read and
19 understands the summary, a statement that the clerk has
20 never been convicted of violating this division or, if
21 convicted, an explanation of the circumstances of each
22 conviction, and a statement that the application and
23 acknowledgment is executed under penalty of perjury.

24 (3) The licensee shall keep the executed application
25 and acknowledgment on the premises at all times and
26 available for inspection by the department. A licensee
27 with more than one licensed off-sale premises in the state
28 may comply with this subdivision by maintaining an
29 executed application and acknowledgment at a
30 designated licensed premises, regional office, or
31 headquarters office in the state. An executed application
32 and acknowledgment maintained at the designated
33 locations shall be valid for all licensed off-sale premises
34 owned by the licensee. Any licensee maintaining an
35 application and acknowledgment at a designated site
36 other than the individual licensed off-sale premises shall
37 notify the department in advance and in writing of the
38 site where the application and acknowledgment shall be
39 maintained and available for inspection. A licensee
40 electing to maintain application and acknowledgments at

1 a designated site other than the licensed premises shall
2 maintain at each licensed premises a notice of where the
3 executed application and acknowledgments are located.
4 Any licensee with more than one licensed off-sale
5 premises who elects to maintain the application and
6 acknowledgments at a designated site other than each
7 licensed premises shall provide the department, upon
8 written demand, a copy of any employee's executed
9 application and acknowledgment within 10 business days.
10 A violation of this subdivision by a licensee constitutes
11 grounds for discipline by the department.

12 (b) On and after January 1, 1992, the licensee shall post
13 a notice that contains and describes, in concise terms,
14 prohibited sales of alcoholic beverages, a statement that
15 the off-sale seller will refuse to make a sale if the seller
16 reasonably suspects that the Alcoholic Beverage Control
17 Act may be violated, and a statement that a minor who
18 purchases or attempts to purchase alcoholic beverages is
19 subject to suspension or delay in the issuance of his or her
20 driver's license pursuant to Section 13202.5 of the Vehicle
21 Code. The notice shall be posted at an entrance or at a
22 point of sale in the licensed premises or in any other
23 location that is visible to purchasers of alcoholic
24 beverages and to the off-sale seller.

25 (c) On and after January 1, 1998, a retail licensee shall
26 post a notice that contains and describes, in concise terms,
27 the fines and penalties for any violation of Section 25658,
28 relating to the sale of alcoholic beverages to, or the
29 purchase of alcoholic beverages by, any person under the
30 age of 21 years.

31 (d) As used in this section:

32 (1) "Off-sale seller" means any person holding a retail
33 off-sale license issued by the department and any person
34 employed by that licensee who in the course of that
35 employment sells alcoholic beverages.

36 (2) "Clerk" means an off-sale seller who is not a
37 licensee.

38 (e) The department may adopt rules and appropriate
39 fees for licensees that it determines necessary for the
40 administration of this section.

1 SEC. 4. Section 25658.4 of the Business and
2 Professions Code, as added by Section 3 of Chapter 695 of
3 the Statutes of 1990, is repealed.

4 SEC. 5. Section 25758.5 is added to the Business and
5 Professions Code, to read:

6 25758.5. In any hearing before the department
7 pursuant to Section 24300, the department may pay any
8 person appearing as a witness at the hearing at the
9 request of the department pursuant to a subpoena, his or
10 her actual, necessary, and reasonable travel, food, and
11 lodging expenses, not to exceed the amount authorized
12 for state employees.

13 SEC. 6. *Section 172p is added to the Penal Code, to*
14 *read:*

15 *172p. The provisions of Section 172a shall not apply to*
16 *the sale or exposing or offering for sale of beer or wine by*
17 *any on-sale licensee under the Alcoholic Beverage*
18 *Control Act whose licensed premises are situated more*
19 *than 1,200 feet from the boundaries of Whittier College*
20 *in the City of Whittier.*

21 SEC. 7. Section 3.5 of this bill incorporates
22 amendments to Section 25658.4 of the Business and
23 Professions Code, as added by Section 4 of Chapter 726 of
24 the Statutes of 1991, proposed by both this bill and SB 805.
25 It shall only become operative if (1) both bills are enacted
26 and become effective on or before January 1, 1998, (2)
27 each bill amends Section 25658.4 of the Business and
28 Professions Code, as added by Section 4 of Chapter 726 of
29 the Statutes of 1991, and (3) this bill is enacted after SB
30 805, in which case Section 3 of this bill shall not become
31 operative.

32 ~~SEC. 7.~~

33 SEC. 8. No reimbursement is required by this act
34 pursuant to Section 6 of Article XIII B of the California
35 Constitution because the only costs that may be incurred
36 by a local agency or school district will be incurred
37 because this act creates a new crime or infraction,
38 eliminates a crime or infraction, or changes the penalty
39 for a crime or infraction, within the meaning of Section
40 17556 of the Government Code, or changes the definition

1 of a crime within the meaning of Section 6 of Article
2 XIII B of the California Constitution.
3 Notwithstanding Section 17580 of the Government
4 Code, unless otherwise specified, the provisions of this act
5 shall become operative on the same date that the act
6 takes effect pursuant to the California Constitution.

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